



October 23, 2001

Mr. Gary W. Smith
City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2001-4818

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153805.

The City of Baytown Police Department (the "department") received a request for a specified police officer's civil service file. You claim that portions of the requested information are excepted from disclosure under section 552.101, 552.114, 552.115, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have highlighted portions of the civil service file which you contend are excepted under section 552.101 of the Government Code in conjunction with privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* This office has also determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common law privacy protects assets and income source information).

However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, financial information relating to benefits must be disclosed if it reflects the employee's mandatory contributions to the benefits plan. Open Records Decision No. 600 (1992). For example, this office has held that an employee's participation in the Texas Municipal Retirement System or in a group insurance plan funded by the governmental body is not excepted from disclosure under common law privacy. Open Records Decision No. 480 (1987). We note, however, that the designation of a retirement beneficiary is protected from disclosure under section 552.101. Open Records Decision No. 600 (1992). Furthermore, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an optional benefits plan offered by the department. *Id.* After reviewing the submitted information, we agree that the green highlighted information must be withheld under section 552.101 of the Government Code in conjunction with common law privacy.

The submitted civil service personnel file also contains W-4 forms. Section 552.101 also encompasses information protected by statute. Title 26 of section 6103(a) of the United States Code renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp 748 (M.D.N.C. 1989). Our office has specifically held that W-4 Forms must be withheld in their entirety. Open Records Decision No. 600 at 9 (1992). Therefore, you must withhold the submitted W-4 forms under section 552.101 of the Government Code.

You also contend that driving record information, which you have marked in blue highlighting, is excepted under section 552.101 in conjunction with chapter 411 of the Government Code. Section 411.083 of the Government Code deems confidential criminal history record information ("CHRI") that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083. Driving record information, however, does not fall under the definition of CHRI, and, therefore, is not confidential under chapter 411 of the Government Code. See Gov't Code § 411.082(2)(B). Accordingly, the driving record information may not be withheld under section 552.101 of the Government Code.

You also contend that a submitted high school transcript is excepted under section 552.114 of the Government Code. Section 552.026 provides that the Public Information Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974 ("FERPA"). See 20 U.S.C. § 1232g(b)(1). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. FERPA restricts the disclosure of personally identifiable information contained in a student's education records. "Education records" are defined as records that contain information directly related to a student and

that are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Because the department is not an educational agency or institution or a person acting for such agency or institution, the submitted transcript is not an "education record" to which FERPA and section 552.114 apply. *See* 20 U.S.C. § 1232(g)(a)(3) (defining educational agency or institution under FERPA). Consequently, the transcript is not excepted under section 552.101 in conjunction with FERPA or under section 552.114 of the Government Code.

Next, you contend that a submitted birth certificate is excepted under section 552.115 of the Government Code. Birth or death records maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official are excepted from required public disclosure under section 552.115 of the Government Code. Because the department is not the bureau of vital statistics or a local registration official, a birth certificate held by the department may not be withheld under section 552.115 of the Government Code.

You also claim that the civil service personnel file contains information that is excepted under section 552.117(2) of the Government Code. Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer complied with section 552.024 of the Government Code. *See also* Open Records Decision No. 670 (2001) (concluded that a governmental body may withhold section 552.117(2) information without requesting a decision from this office). Therefore, you must withhold the information that you highlighted, as well as some additional information that we marked, under section 552.117(2) of the Government Code.

Further, you contend that a driver's license number is excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the highlighted driver's license number, as well as the additional marked information, under section 552.130(a) of the Government Code.

In conclusion, you must withhold the personal financial information that you highlighted under section 552.101 in conjunction with common law privacy. You must also withhold the submitted W-4 forms under section 552.101 of the Government Code. Further, you must withhold the officer's home telephone, home address, social security number and family member information under section 552.117(2) of the Government Code and driver's license information under section 552.130 of the Government Code. You must release the remaining submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

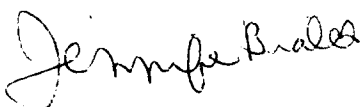
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 153805

Enc: Submitted documents

c: Mr. Jed Silverman
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(w/o enclosures)